DETAILED ACTION

Introduction

1. The enclosed Office Action is a re-mailing of the Office Action mailed 1/25/2007, re-setting the period for response. The Office Action of 1/25/2007 was mailed to an incorrect address, since a P.A. with a Change of Correspondence Address, was received in the application on 8/11/2006.

Claim Rejections - 35 USC § 101

2. 35 U.S.C. 101 reads as follows:

> Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 1 & 49-51 are rejected under 35 U.S.C. 101 because the instant claims are directed to non-statutory subject matter. Considering claims 1 & 49-51, the instant claims are directed to software. For instance, claim 1 recites, "A method performed by a software agent". Even though method claims are generally considered under the Process statutory class, since claim 1 recites 'performed by a software agent…', the claim is thus considered a software claim, and is therefore not statutory. Software claimed as an element that is not embodied in a computer readable media are descriptive material per se and are not statutory, because they are not capable of causing functional change in the computer.

Claims that are directed to software, stored on a computer readable medium (as supported by the specification) are considered statutory.

Regarding claim 49 recites 'tracking said individual with at least one software agent…', and is likewise treated, as in claim 1.

Regarding claim 50, the instant claim recites, 'A method performed by a software process…', and is likewise treated as claim 1.

Regarding claim 51, the instant claim recites, 'tracking said individual with at least one software process performing data collection…', and is likewise treated as claim 1.

3. 35 U.S.C. 101 reads as follows:

> Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 1 & 50 are rejected under 35 U.S.C. 101 as not falling within one of the four statutory categories of invention.

Considering claims 1 & 50, while the claims recite a series of steps or acts to be performed, a statutory "process" under 35 U.S.C. 101 must (1) be tied to particular machine, or

(2) transform underlying subject matter (such as an article or material) to a different state or thing. See page 10 of In Re Bilski 88 USPQ2d 1385. The instant claims are neither positively tied to a particular machine that accomplishes the claimed method steps nor transform underlying subject matter, and therefore do not qualify as a statutory process. The claimed method includes steps …that are broad enough that the claim could be completely performed mentally, verbally or without a machine nor is any transformation apparent.

For example, 'obtaining information identifying electronic media from a cooperative media handler…', reads on a first person looking at a description of a TV program printed on a sheet of paper (that includes an identification label associated with the TV program). The further limitation of 'provided by a second entity using a defined interface…', represents an insignificant extra-solution activity.

'providing at least a portion of the identifying information to the first entity measuring the exposure of the individual to the electronic media', reads on the first person sending the information, i.e., identification label associated with the TV program to a server.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

5. Claims 1, 3, 5-51, 53 & 55-98 are rejected under 35 U.S.C. 103(a) as being unpatentable over Davis, (U.S. Pat # 5,796,952), in view of Astiz, (U.S. Pat # 5,918,012).

Considering claims 1 & 50, the claimed method performed by a software agent of a first entity measuring the exposure of an individual to electronic media, comprising

'obtaining identifying information of the electronic media from a cooperative media handler', is met by the disclosure in Davis of the JAVA applet tracking the display of media displayed by a browser, see col. 9, lines 15-45; col. 10, lines 11-65, col. 12, lines 12-50. Thus, in this embodiment of Davis, the claimed *'cooperative media handler'* corresponds with the "helper application" or "plug-in", (col. 8, lines 44-46) whereas the claimed *'software agent'* corresponds with the tracking program, which may be implemented as a JAVA applet in Davis.

As for the additionally claimed limitation, *'defined interface that provides interoperability between the software agent and the cooperative media handler'*, even though Davis discloses that a tracking program may be installed within a helper application/plug-in, which requires at least some communication, the reference does not specifically discuss the interface between them, for example, a defined interface. However, Astiz provides a disclosure of a defined interface (i.e., API, Application Program Interface) that operates between a browser and a viewer 31, see col. 11, lines 17-25. Astiz discloses that the viewer 31 must interface with the API of the browser in order to communicate the information, such that the viewer 31 corresponds with the claimed cooperative media handler.

It would have been obvious for one ordinary skill in the art at the time the invention was made, to provide a defined interface between any two software entities that communicate with each other, within a client system, as taught by Astiz, such as the helper application/plug-in and the tracking agent of Davis, at least for the known benefit of establishing a communication protocol that supports the interaction and insures reliable communication between the two instant software entities, which is the purpose of an Application Program Interface (API).

'providing at least a portion of the identifying information to the first entity' is met by Davis, col. 4, lines 36-65; col. 9, lines 35-38, teaching that the tracking program automatically sends the information acquired from the client back to the server.

Considering claims 3 & 53, the client in Davis that receives the web page information is part of an audience for the instant web page.

Considering claims 5-6 & 55-56, Davis teaches that the system may transmit the network ID, client ID (or a cookie of the client), which reads on the claimed *'identifying and authenticating an individual'*.

Considering claims 7-10 & 57-60, in Davis the claimed subject matter *'identifying information'* reads on the URL of a web page, which is used to identify the web page, col. 11, lines 18-22. Since the URL represents a network address & file name of the web page, the claimed 'metadata', 'presentation information', and 'contextual information' are also met, col. 8, lines 30-39.

Considering claims 11 & 61, the feature is met by Davis, col. 8, lines 64-67.

Considering claims 12-13 & 62-63, Davis teaches that other information concerning the client computer may be acquired, such as the type of hardware and the various resource resident on the client computer, see col. 9, lines 41-45. Therefore, it would have been obvious for one of ordinary skill in the art at the time the invention was made, to also identify the resources that actually processed/presented the content at the subscriber equipment, which the subscriber viewed and or interacted with, at least for the benefit determining the popularity of the instant resources utilized by the client.

Considering claims 14-19 & 64-69, the helper/plug-ins receives, decodes and presents data from wired and wireless networks, in real-time and extends the capability of its host, col. 6, lines 17-34; col. 8, lines 40-52.

Considering claims 20-21 & 70-71, the helper/plug-in is 'mobile' is broad enough to read on the disclosure that software can be downloaded to the viewers 31, col. 6, lines 32-56. The helper, plug-in is 'stable' is broad enough to read on the disclosure that the viewer 31 provides the appropriate application software to display certain video that cannot be displayed by the browser, col. 4, lines 15-48.

Considering claims 22, 24-26, 72 & 74-76 the media in Davis may be pre-recorded, but is experienced in real-time by the user. The viewer 31 in Astiz interprets & translates the data into a format that may be viewed by the customer, col. 6, lines 5-45, which reads on *'decodes'*. As for the claimed 'pre-recorded electronic media', Davis teaches that some of the tracked information may have been cached at the client, col. 8, lines 21-30.

Considering claims 23 & 73, the claimed subject matter reads on the server updating either the tracking program or plug-in, by downloading the executable applications from the server, which means that the server can update the tracking program and change its operating manner, col. 10, lines 11-68; col. 14, lines 21-46. For instance, Davis discloses that in different embodiments the tracking program may be caused to monitor disparate information, such as the

overall amount of information that is downloaded & displayed, with respect to the amount of bits, (col. 16, lines 41-67).

Considering claims 27, 48, 77 & 98, the client computer in Davis, (col. 6, lines 42-67; col. 7, lines 30-65) reads on the claimed Internet-enabled device.

Considering claims 28 & 78, the subject matter reads on the embodiment of the tracking program being a JAVA applet stored at the server B, col. 12, lines 12-55.

Considering claims 29 & 79, Davis does not teach the use of a smart card. Official Notice is taken that use of smart cards was known in the art. It would have been obvious for one of ordinary skill in the art at the time the invention was made, to modify Davis with technique of storing/accessing software processes on a smart card, at least in order to have a more modular system.

Considering claims 30 & 80, Davis discloses on-line services, col. 6, lines 51-65, reads on the tracking program transmitting the collected to the server for storage and analysis, col. 4, lines 55-65.

Considering claims 31 & 81, the JAVA agent and helper/plug-in are separate in Davis.

Considering claim 32 & 82, see col. 5, lines 15-28, identifying information reads on the URL of the HTML, col. 8, lines 17-21.

Considering claims 33 & 83, the limitation reads on the discussion in Davis that the tracking program may track different elements of the subscriber interactions such as indicia and/or links selected and/or time, etc.

Considering claims 34-36 & 84-86, the subject matter reads on the operation of the tracking program in Davis receiving the identifying information from the plug-in (viewer 31) of Astiz.

Considering claims 37-40, 43-44, 87-90 & 93-94, the claimed subject matter reads in the API disclosed in Astiz, (col. 11, lines 15-25) which represents a defined interface between a plug-in , i.e., viewer 31 and a browser.

Regarding claims 39 & 89, Davis does not discuss secure communication. Official Notice is taken that at the time the invention was made, the need for secure communication was well known in the art. It would have been obvious for one of ordinary skill in the art at the time the invention was made, to modify Davis with the feature of secure communication, at least in order to ensure that only the intended recipient views the transmitted data.

Considering claims 41-42 & 91-92, Davis teaches that the tracking program may interact with the server (i.e., host) using a JAVA applet.

Considering claims 45 & 95, Davis teaches that the tracking program may monitor the user time spent and interactions with a game, which meets the claimed, *'electronic media is a part of a video game'*, see col. 13, lines 46-52.

Considering claims 46-47 & 96-97, the subject matter reads on an interactive HTML webpage that is downloaded and viewed in Davis, col. 11, lines 1-24.

Considering claims 49 & 51, the claimed method steps for measuring the exposure of an individual to electronic, corresponds with subject matter mentioned above in the rejection of claims 1 & 50, and is likewise treated.

6. Claims 2 & 52 are rejected under 35 U.S.C. 103(a) as being unpatentable over Davis & Astiz, further in view of Welsh, (U.S. Pat # 5,374,951).

Considering claims 2 & 52, Davis does not discuss any limitation regarding how the panel members are chosen. Nevertheless Welsh, which is in the same field of endeavor of monitoring which content is displayed by a panel member, teaches that the test market are conducted based on the geographic and/or demographic information of the household, see col. 4, lines 15-22. Welsh, also discloses that is preferable to use panelist(s) that have agreed to be

monitored. It would have been obvious for one ordinary skill in the art at the time the invention was made, to operate Davis by using panelist(s) that agree to participate, for the well-known purpose of protecting the privacy of persons who do not want to be monitored.

7. Claims 4 & 54 rejected under 35 U.S.C. 103(a) as being unpatentable over Davis & Astiz, further in view of Lu, (U.S. PG-PUB 2003/0110485).

Considering claims 4 & 54, Davis does not discuss that panel member(s) may be chosen as a statistical sample of a population. Nevertheless Lu, which is in the same field of endeavor of monitoring content displayed by a viewer, goes on to teach using a statistical representation of a population, Para [0110]. It would have been obvious for one of ordinary skill in the art at the time the invention was made, to modify Davis with feature of using a statistical representation of a population, as taught by Lu, at least for the benefit of reducing the actual number of person that need to tracked/monitored.

Conclusion

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

A) Klemets Teaches a plug module 952a that interfaces between a browser 950 and a client module 962, Fig. 9A.

B) Torres Teaches that well technology of a plug-in to a browser that decodes proprietary data, col. 4, lines 60-67 thru col. 5, lines 1-21.

Any response to this action should be mailed to:

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

or faxed to:
(571) 273-8300, (for formal communications intended for entry)
Or:
(571) 273-7290 (for informal or draft communications, please label "PROPOSED" or "DRAFT")

Any inquiry concerning this communication or earlier communications from the examiner should be directed to REUBEN M. BROWN whose telephone number is (571) 272-7290. The examiner can normally be reached on M-F(8:30-6:00), First Friday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christopher Kelley can be reached on (571) 272-7331. The fax phone numbers for the organization where this application or proceeding is assigned is (571) 273-8300 for regular communications and After Final communications.

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/Reuben M. Brown/
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